

No.

①
90-752

Supreme Court, U.S.

FILED

NOV 13 1990

JOSEPH F. SPANJOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

WINCHESTER v. COUNTY OF SAN DIEGO ET AL.

PETITION FOR REVIEW
TO SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

ROGER F. WINCHESTER

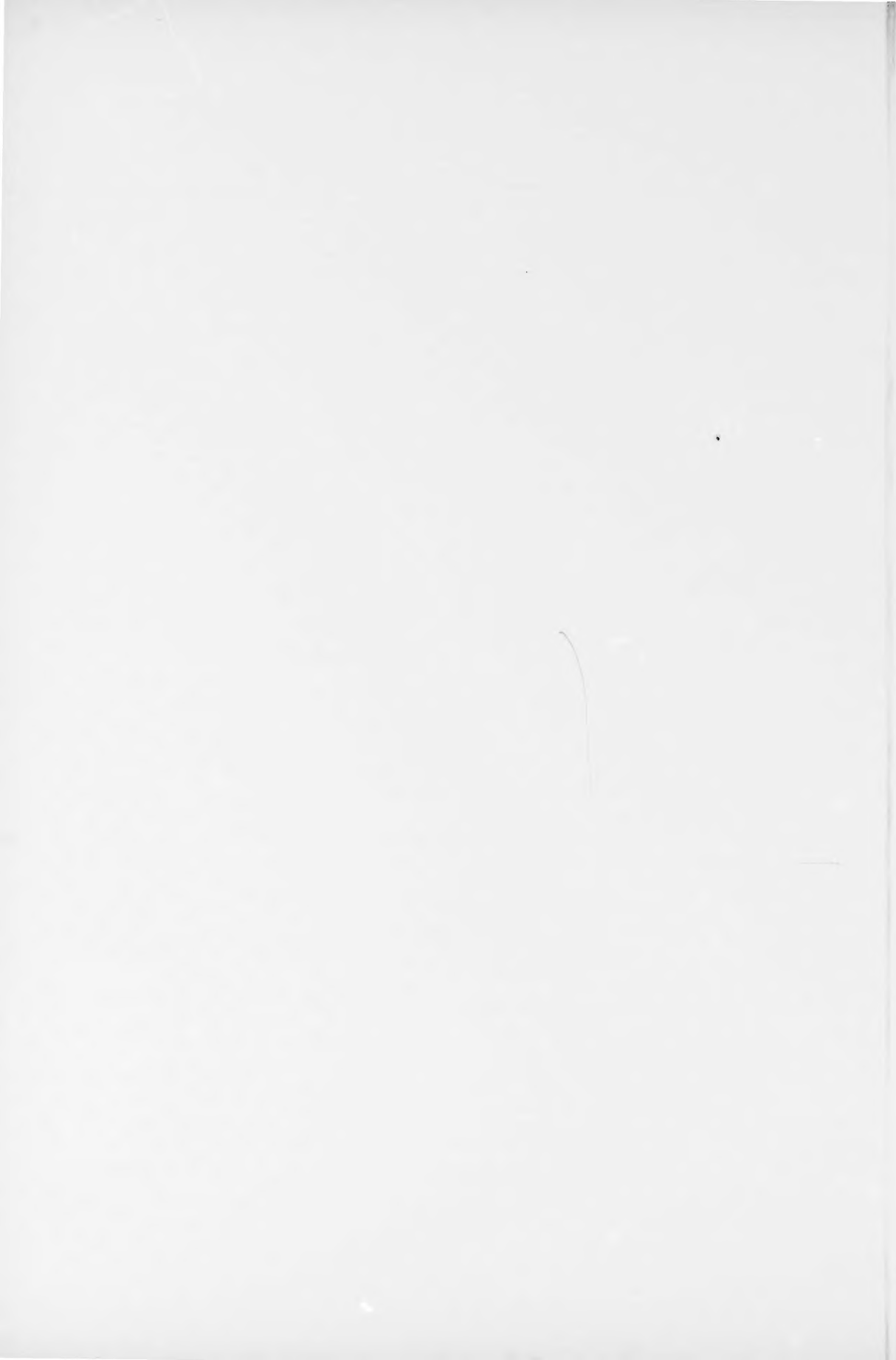
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* ZIP 91935-1635 eff 1-1-91



QUESTION PRESENTED FOR REVIEW

Is government valid that is not
republican form of government relative
to electors governed?

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(1) Petitioner: Roger F. Winchester

Respondents: County of San Diego

State of California

TABLE OF AUTHORITIES

CASES

Avery v Midland County Texas 390 U S 474	11
Hurtado v California 110 U S 516	12
U S v Cook D C Pa 1970 311 F Supp 618	10
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UNITED STATES CONSTITUTION

Article 4 Section 2	12
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CALIFORNIA CONSTITUTION

Article 3 Section 1	9
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Article 20 Section 3	10

COUNTY OF SAN DIEGO PUBLICATION

People Helping People OIPA5M0488	7a 8a 9a 10a
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GROUNDS JURISDICTION INVOKED

DATE OF JUDGMENT: August 15, 1990
ORDER DENYING REVIEW filed by Supreme
Court of California. (2)

STATUTORY JURISDICTION: 28USC1257(a)
is believed to confer jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED: (3)
U. S. CONSTITUTION ARTICLE 4 SECTION 4:
"The United States shall guarantee to
every State in this Union a republican
form of government....."

(2) see page 2a

(3) see page 3

STATEMENT OF CASE

Restraint that will prevent State of California from allowing authority of the State to be exercised by County of San Diego in portion of county that is unincorporated area (area not in any incorporated city) in manner that is not republican form of government relative to electors in unincorporated area was prayed for in Civil Complaint that initiated this action in court. Complaint mentioned supremacy of Constitution of United States and its guarantee to every State a republican form of government. (4) Complaint involved an environmental issue that was an immediate cause of this action in court.

Defendants demurred. Plaintiff's answer to demurrer by State included excerpt from County publication OIPA5M0488 (5) PEOPLE HELPING PEOPLE containing information about San Diego County Government,

(4)see page 9. (5)see page 7a, 8a, 9a, 10a

and stated that expectation of republican form of government is based on Constitution of United States Article 4 Section 4. Court sustained demurrers. (6)

Plaintiff appealed, continuing republican form of government contention in Opening Brief and again in Petition For Rehearing which again sought restraint against State and accordingly invalidation of some resolutions of the County Board of Supervisors mentioned in the Complaint. Court of Appeal affirmed orders sustaining demurrers and added dismissal, (7) and denied Petition For Rehearing. (8)

Plaintiff petitioned State Supreme Court for review, continuing contention of guarantee of republican form of government and supremacy of U. S. Constitution in Petition and also in Reply to defendant County Answer. State Supreme Court denied Petition For Review. (9)

REASONS FOR GRANTING WRIT

The question is important and merits review by Supreme Court of U. S. of decision by state court of last resort, the effect of which would not be consistent with facts, constitution, and court decisions cited in the record of this case and hereinafter.

FACT: Republican form of government of, by, for the people who reside in the portion of the county that is unincorporated area is not the form of government described in County of San Diego publication PEOPLE HELPING PEOPLE OIPA5M0488:

"....Collectively the five Supervisors represent the entire population of the San Diego County.....The Board of Supervisorsenacts ordinances and resolutions that in some cases.....apply only to the unincorporated areas....." (10)

(10) see page 9a

That which applies only in unincorporated area as described, has not been republican form of government. The government which did that had not been elected exclusively by electors thus being governed. Instead it was elected by electors throughout entire county, resulting in republican form of government for what County Government does that is applicable throughout entire county, but not republican form of government for what is applicable exclusively in the portion of the county that is unincorporated area. People who reside in unincorporated area would have to be the only people who vote in the election of the government which does the governing that is applicable exclusively in unincorporated area, for that government to be republican form of government of unincorporated area.

CONSTITUTION - COURT DECISIONS: Constitu-
tion wording and court decision wording
add up to guarantee of republican form of
government for governing that occurs by
authority of the State in San Diego County.

U S const Art 4 Sec 4: "The United
States shall guarantee to every State in
this Union a republican form of govern-
ment....."

Cal Const Art 11 Sec 1: "The State is
divided into counties which are legal sub-
divisions of the State."

U S Const Art 6: "This Constitution
....shall be the supreme law of the land;
and the Judges in every State shall be
bound thereby....."

Cal Const Art 3 Sec 1: ".....United
States Constitution is the supreme law of
the land."

U S Const Art 6: ".....members of the
several State legislatures, and all execu-
tive and judicial officers, both of the

United States and of the several States, shall be bound by oath or affirmation to support this Constitution....."

Cal Const Art 20 Sec 3: "The members of the Legislature, and all public officers and employees, executive, legislative, and judicial,...shall....'....swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California..... 'Public officer and employee' includes every officer and employee of the State, including.....every county....."

U S Const Amend 9: "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

U S v Cook D C Pa 1979 311 F Supp 618
USCA Const Amend 9: "Purpose of Ninth amendment is to guarantee to individuals those rights inherent to citizenship in a democracy which are not specifically enum-

erated in bill of Rights."

U S Const Amend 10: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

West Virginia State Board of Education v Barnette 319 U S 624 at 637: "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures."

U S Const Amend 14 Sec 1: "No State shall.....deny to any person within its jurisdiction the equal protection of the laws."

Avery v Midland County Texas 390 U S 474 at 480: "A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law."

U S Const Art 4 Sec 2: "The citizens of each State shall be entitled to all privileges.....of citizens in the several States."

U S Const Art 14 Sec 1: "No State shall make or enforce any law which shall abridge the privileges.....of citizens of the United States....."

U S Const Amend 5: "No person shallbe deprived of.....liberty....without due process of law....."

U S Const Amend 14 Sec 1: "No State shall.....deprive any person of....liberty without due process of law....."

Hurtado v California 110 U S 516 at 535: "Due process of law.....In the Fourteenth Amendment, by parity of reason, it refers to that law of the land in each State, which derives its authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and jus-

tice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure."

CONCLUSION: Republican form of government is guaranteed. The Constitution means what it says. One government can not possibly be republican form of government for both the county as a whole and also for an exclusive portion of the county such as unincorporated area in a county such as San Diego County that embodies both incorporated city area and also populated unincorporated area. For the reasons presented herein, the Petition For Writ Of Certiorari should be granted, resulting ultimately in invalidation of portion of governing done by County Board of Supervisors that has applicability in unincorporated area exclusively, in manner that is not republican form of government relative to thus

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governed electors in unincorporated area.

Submitted by:

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* ZIP 91935-1635 eff 1-1-91

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(15) copy machine reproduction from

County of San Diego publication

PEOPLE HELPING PEOPLE OIPA5M0488

pages 2, 3, 4, 5.

SUPREME COURT

FILED

AUG 15 1990

ORDER DENYING REVIEW

AFTER JUDGMENT BY COURT OF APPEAL

Fourth Appellate Dist Div One No D009378

IN SUPREME COURT OF STATE OF CALIFORNIA

IN BANK

ROGER F. WINCHESTER, Appellant

v

COUNTY OF SAN DIEGO Et Al., Respondents

Appellant's petition for review DENIED

Chief Justice

FILED

MAY 30, 1990

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROGER F. WINCHESTER,
Plaintiff and Appellant

V

COUNTY OF SAN DIEGO et al.,

Defendants and Respondents.

D009378

Super. Ct.

No. BE602042

DISPOSITION

The orders of the superior court from which the purported appeal is taken are modified and amended by adding thereto paragraphs dismissing the actions. The resultant judgments of dismissal are affirmed.

FROEHLICH, J.

WE CONCUR:

KREMER, P.J.

WIENER, J.

FILED

DEC 7, 1988

IN THE SUPERIOR COURT OF THE STATE OF CAL-
IFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

ROGER F. WINCHESTER,
Plaintiff

v

COUNTY OF SAN DIEGO et al.,
Defendants

) No. BE602042

) ORDER

) GRANTING

) DEMURRER OF

) COUNTY OF

) SAN DIEGO

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND
DECREED that the demurrer be, and hereby
is granted without leave to amend and that
plaintiff take from defendant County of San
Diego nothing by his complaint.

JUDGE OF THE SUPERIOR COURT

EDDIE C. STURGEON

FILED

NOV 30, 1988

IN THE SUPERIOR COURT OF THE STATE OF CAL-
IFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

ROGER F. WINCHESTER,)	No. BE602042
Plaintiff,)	ORDER
v)	ON
COUNTY OF SAN DIEGO et al.,)	DEMURRER
Defendants		

IT IS ORDERED that the demurrer of the
State of California be, and hereby is, sus-
tained on the ground that the complaint
fails to state cause of action. Plain-
tiff has 39 days from the date of this
order in which to amend.

J. MICHAEL BOLLMAN

JUDGE OF THE SUPERIOR COURT

FILED

JUN 28, 1990

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROGER F. WINCHESTER,)	
Plaintiff and Appellant,)	DO09378
v)	(Super. Ct.
COUNTY OF SAN DIEGO et al.,)	No. BE602042)
Defendants and Respondents.)	

THE COURT:

The petition for rehearing is denied.

KREMER, P.J.

YOUR COUNTY GOVERNMENT

People helping people . . . through its more than 13,000 employees, the County provides services which enhance the lives of San Diego County residents. These include **regional** services provided to all County residents, and **municipal** (city-type) services provided only to residents of the unincorporated areas – areas where no city government exists.

An administrative arm of the State, your **San Diego County Government** is a large and complex organization. The County's authority derives from the California Constitution and includes the duty and responsibility to preserve the public health, safety and welfare of its residents.

San Diego County is one of 12 counties statewide to have adopted a charter. The Charter, approved by the voters of San Diego County initially in 1932 and amended 27 times since, confers upon the County certain powers in addition to those authorized specifically by the California Legislature. Among those powers is the right to organize an administrative structure to meet the needs of the County and its citizens.

A BRIEF HISTORY

The County of San Diego is one of California's original counties. The first of 27 counties formed by the State Legislature in 1850, it originally counted a population of 798 and sprawled over 37,000 square miles of what is now San Diego and Imperial Counties and major portions of Riverside, San Bernardino, and Inyo Counties.

Today the County spans 4,300 square miles. Its population has grown to over two million people. It ranks second in population among the 58 counties in California. It is the fifth largest county in the United States.

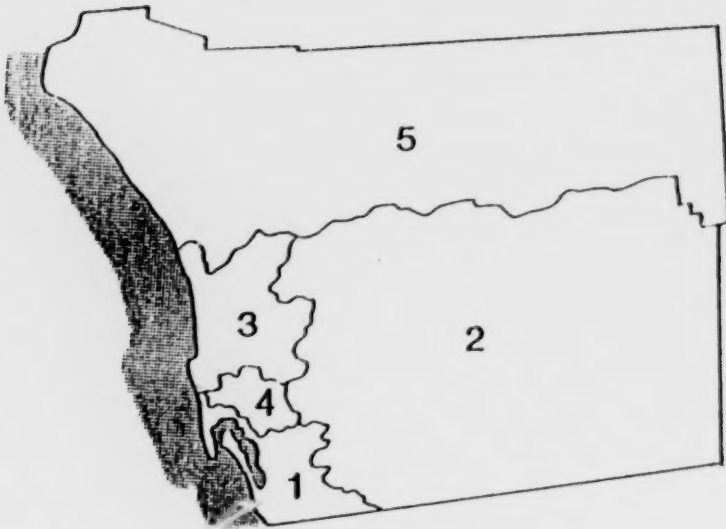
Eighteen cities, representing nearly eighty percent of the region's population and occupying ten percent of its land area, add a balanced blend of residential, commercial, and industrial land uses to the area's agrarian heritage.

BOARD OF SUPERVISORS

The County of San Diego is governed by a **Board of Supervisors** consisting of five elected representatives. Collectively, the five Supervisors represent the entire population of the San Diego County region. Each Supervisor must reside in, and be nominated and elected from, one of the five supervisorial districts. District boundaries are based primarily on population, with each Supervisor representing about 400,000 people. The office of County Supervisor is non-partisan, with a term of four years.

The Board of Supervisors is the legislative and executive authority of the County. It enacts ordinances and resolutions that in some cases apply to the entire region and in other cases apply only to the unincorporated areas. The Board adopts an annual budget, and establishes and controls special districts for the provision of services in the unincorporated areas. The Board

SUPERVISORIAL DISTRICTS



also appoints numerous advisory boards, commissions, and special committees to advise and assist in the administration of County government.

The executive responsibilities of the Board of Supervisors are discharged through the Chief Administrative Officer, who is appointed by and accountable to the Board.

